

1 UNITED STATES DISTRICT COURT
 2 WESTERN DISTRICT OF WASHINGTON
 3 AT SEATTLE

4 MARY E. OSBORNE,

5 Plaintiff,

6 v.

7 COMMISSIONER OF SOCIAL SECURITY,

8 Defendant.
 9

Case No. 2:21-cv-387-RSM

ORDER GRANTING PLAINTIFF'S
 MOTION FOR ATTORNEY FEES
 PURSANT TO 42 U.S.C. § 406(b)

10
 11 This matter comes before the Court on Plaintiff Mary Osborne's Motion for Attorney
 12 Fees under 42 U.S.C. § 406(b). Dkt. #23. Plaintiff seeks fees in the amount of \$18,882.25. Upon
 13 receipt of this sum, counsel for Plaintiff will refund the previously awarded Equal Access to
 14 Justice Act ("EAJA") fees of \$4,705.45 directly to the Plaintiff. *Id.* Defendant neither supports
 15 nor opposes counsel's request. Dkt. #24. However, "the Commissioner requests that the Court
 16 specifically indicate that any amount it authorizes in § 406(b) fees is to be paid out of Plaintiff's
 17 past-due benefits in accordance with agency policy." *Id.* at 2.

18
 19 Attorney's fees may be awarded to a successful social security claimant's lawyer for his
 20 or her representation before a court pursuant to 42 U.S.C. §§ 406(b). *Straw v. Bowen*, 866 F.2d
 21 1167 (9th Cir.1989). Plaintiff must apply to the Social Security Administration for an award of
 22 fees for representation at the administrative level. 42 U.S.C. § 406(a); *Stenswick v. Bowen*, 815
 23 F.2d 519 (9th Cir.1987). Under 42 U.S.C. § 406(b), the Court may allow a reasonable fee for an
 24 attorney who represented a Social Security Title II claimant before the Court and obtained a
 25 favorable judgment, as long as such fee is not in excess of 25% of the total past-due benefits. *See*
 26 *Grisbrecht v. Barnhart*, 535 U.S. 789 (2002).
 27
 28

1 Fee awards may be made under both the EAJA and § 406(b), but the claimant's attorney
2 must refund to the claimant the amount of the smaller fee. *See Gisbrecht v. Barnhart*, 535 U.S.
3 789, 796 (2002).

4 The Court concludes the request is reasonable within the meaning of § 406(b).
5 Accordingly, having reviewed Plaintiff's Motion, the Commissioner's Response, the exhibits
6 and declarations attached thereto, and the remainder of the record, the Court ORDERS as follows:
7

- 8 1) Plaintiff's Motion for Attorney Fees Pursuant to 42 U.S.C § 406(b), Dkt. #23, is
9 GRANTED. \$18,882.25, which represents twenty-five percent (25%) of the past due
10 benefits awarded to the Plaintiff, are to be remitted to the Law Offices of Charles E.
11 Binder and Harry J. Binder, LLP. Upon receipt of this sum, counsel for Plaintiff is
12 directed to refund the previously awarded Equal Access to Justice Act fees of
13 \$4,705.45 directly to the Plaintiff.
14
- 15 2) Any payment of fees is from the Plaintiff's withheld past-due benefits. If the
16 Commissioner has not withheld past-due benefits sufficient to satisfy this order and
17 Plaintiff's attorney reports being unable to collect the fee from the Plaintiff, the
18 Commissioner will satisfy this order via the procedures in the Program Operation
19 Manual System (POMS) GN 03920.055.C.
20

21 DATED this 17th day of September, 2024.
22

23 

24 RICARDO S. MARTINEZ
25 UNITED STATES DISTRICT JUDGE
26
27
28